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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

[Docket No. FV94-967-3FR]

Suspension of Marketing Order 967; Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension order.

SUMMARY: This rule suspends Federal Marketing Order No. 967 for celery grown in Florida, and rules and regulations implemented thereunder, through December 31, 1997. The suspension includes budget, assessment, and volume control rules which were previously established for the 1994-95 marketing season. This rule is in response to a recommendation for suspension made by the Florida Celery Committee (committee), the agency responsible for local administration of the order. The committee's recommendation is based on the belief that loss of market share and a reduction in the number of producers and handlers has diminished the need for regulating Florida celery.

EFFECTIVE DATE: January 12, 1995, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT:

William G. Pimental, Southeast Marketing Field Office, P.O. Box 2276, Winter Haven, Florida 33883-2276, telephone 813-299-4770, or Mark Slupek, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-205-2830.

SUPPLEMENTARY INFORMATION: This action is issued under Marketing Agreement and Order No. 967, both as amended [7 CFR part 967], regulating the handling of celery grown in Florida,

hereinafter referred to as the order. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act. This suspension action is being taken under the provisions of section 8c(16)(A) of the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This suspension order has been reviewed under Executive Order 12778, Civil Justice Reform. The order suspends Marketing Order No. 967 for celery grown in Florida, and rules and regulations implemented thereunder, through December 31, 1997. Administrative budget, assessment, and volume control rules which were previously established for the 1994-95 marketing season, which began August 1, 1994, also are suspended. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are six handlers of Florida celery who are subject to regulation under the marketing order and five celery producers within the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000. Small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of these Florida celery handlers and producers may be classified as small entities.

Marketing Order No. 967 has been in effect since 1965. The order provides for the establishment of grade, size, container and inspection requirements, as well as volume regulation. In addition, the order authorizes production research, marketing research, and development projects. It also provides for reporting and recordkeeping requirements on affected handlers. The production and marketing season runs from early November through late June.

The committee held a teleconference on November 22, 1994, and unanimously recommended suspension of the marketing order through December 31, 1997. The committee's recommendation was based on the fact that the number of growers and handlers had declined to the lowest number in 20 years. Only five growers remain. There are six handlers. The suspension will eliminate the continued expense of administering the marketing order and will relieve the industry of assessments. With the economic conditions the industry is facing, this reduction in costs should be beneficial.

The authority to implement grade, size, container and inspection requirements has not been used for years. The authorities that were being utilized were the provisions for research and development and volume regulation. However, the Committee believes that the program is no longer effectively helping market Florida celery.

The volume control limitations placed on the quantity of Florida celery handled for fresh shipment have not restricted the quantity of Florida celery actually produced or shipped to fresh markets in recent years, because production and shipments have been less than the marketable quantities established. Thus, regulating volume has been inconsequential.

The committee recommended suspension, not termination, of the marketing order to allow the industry an opportunity to recover. Florida's share of the domestic celery market has declined, but committee members remain optimistic that, in time, the Florida celery industry may regain its former position. If the industry should recover, the committee would like to maintain the option of reactivating the Federal marketing order.

Under the suspension, the industry will be able to monitor the status of celery production in Florida for the next three marketing seasons. A meeting will be held prior to December 1997, to discuss the condition of the industry. At that time, a determination will be made to recommend reactivation, continuation of the suspension, or termination of the order. The recommendation would require the approval of the Secretary. If conditions improve enough to convince the industry that the order would be effective before the conclusion of the suspension period, a recommendation could be made to the Secretary to remove the suspension at that time.

Therefore, based on the foregoing considerations, it is found that Federal Marketing Order No. 967, and the rules and regulations issued thereunder, do not tend to effectuate the declared policy of the Act. This action suspends, through December 31, 1997, the provisions of Federal Marketing Order No. 967 and the rules and regulations issued thereunder, including but not limited to, the:

- (1) Provisions of the order dealing with the establishment and responsibilities of the committee and the administration of the order;
- (2) Any rule or regulation, including a budget and assessment rule [59 FR 52411, October 18, 1994] and volume control regulations [59 FR 49571, September 29, 1994] issued for the 1994-95 marketing season, and research and development projects;
- (3) Provisions of the order dealing with expenses and the collection of assessments; and
- (4) Information collection and reporting requirements (In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), such

requirements have been approved by the Office of Management and Budget and assigned OMB Control No. 0581-0145).

During the suspension period, all committee members and their alternates will serve as trustees. The trustees will be responsible for overseeing the administrative affairs of the order. This includes completing the committee's unfinished business, ensuring termination of all outstanding agreements, contracts, and the payment of all obligations. The trustees will also be responsible for safeguarding program assets, and arranging for a financial audit to be conducted. All such actions by the trustees during the period of suspension are subject to the approval of the Secretary. Those designated as trustees are: Mr. Pat Ferlise, Chairperson, Mr. Thomas L. Brown, Vice-Chairperson, Mr. L. E. Duff, Secretary/Treasurer, Mr. Tony Woodham, Mr. David L. Young, Mr. F. S. Duda, Mr. Charles E. Allison, Mr. Glenn R. Rogers, Mr. W. Rex Clonts, Sr., Mr. W. Rex Clonts, Jr., Mr. Felix Ferlise, Mr. Henry M. Daniels, Mr. Milton Ferlise, Mr. Dan Duda, Mr. Francis J. McCarthy, Mr. Walter Duda, Mr. Bill Grindstaff. The trustees shall continue in their capacity as long as they are eligible to serve as provided in § 967.26 of the order, and until the order is reactivated or terminated, unless they are discharged by the Secretary.

The remainder of the reserves, after immediate expenses are paid, will be held by the trustees to be used to cover unforeseen, outstanding expenses obligated by the committee. Such funds could also be used by the trustees to pay for necessary start-up costs should the order, at the determination of the Secretary, be reactivated. When a final determination is made regarding the order, any remaining funds will be used or disbursed in accordance with the appropriate order provisions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure with respect to this action because: (1) This action relieves restrictions on handlers by suspending the requirements regulating the handling of celery pursuant to Marketing Order No. 967; (2) handlers are aware of this action, which was discussed and recommended at a meeting held by the committee; and (3) no useful purpose would be served

by delaying the suspension of the marketing order.

List of Subjects in 7 CFR Part 967

Marketing Agreements, Celery, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority of 7 U.S.C. 601-674, 7 CFR Part 967, is suspended effective January 12, 1995 through December 31, 1997.

Dated: January 6, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95-727 Filed 1-11-95; 8:45 am]

BILLING CODE 3410-02-P

Rural Utilities Service

7 CFR Part 1773

Correction of Typographical Error

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule correction of typographical error.

SUMMARY: This document corrects a typographical error in a final rule published by the Rural Utilities Service (RUS) on December 27, 1994, at 59 FR 66438. This regulation revised nomenclature in agency regulations to reflect the reorganization of the Department of Agriculture mandated by recent legislation.

EFFECTIVE DATE: December 27, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, Program support Staff, Rural Utilities Service, room 2234, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number 202-720-0736; FAX 202-720-4120.

SUPPLEMENTARY INFORMATION: This correction affects revisions to definitions in 7 CFR Part 1773. The published document, in the second column of page 66440 cites the incorrect section of part 1773. The definitions revised are actually in section 1773.2. To avoid confusion, RUS is correcting this error.

Therefore, 7 CFR Part 1773 is corrected as follows:

1. The authority citation for part 1773 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; Pub.L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. In the second column of page 66440, in amendatory instruction number 25 "1773.3" is corrected to read "1773.2".